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7 MICHAEL PARDI, et al.,
8 Plaintiffs,
9 v.
10 TRICIDA, INC., et al.,
11 Defendants.
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Case No. 21-cv-00076-HSG

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28 **ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
SEAL**

Re: Dkt. No. 139

Pending before the Court is Defendant Gerrit Klaerner (“Klaerner”)’s motion to seal related to Plaintiff’s Second Amended Complaint (“SAC”) and the briefing for Klaerner’s motion to dismiss.¹ *See* Dkt. No. 139. Interested non-party Renibus Therapeutics, Inc. (“Renibus”) filed a statement in support of Klaerner’s motion to seal, seeking to maintain under seal a small portion of the information identified by Klaerner in his sealing request. *See* Dkt. No. 140. For the reasons detailed below, the Court **GRANTS** the motion to seal as to the narrower set of information identified by Renibus, and **DENIES** the motion to seal as to the remainder of the information identified by Klaerner.

I. LEGAL STANDARD

Courts generally apply a “compelling reasons” standard when considering motions to seal documents. *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). “This standard derives from the

¹ Defendant Tricida, Inc. filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, and Plaintiff voluntarily dismissed Tricida from the case in March 2023. *See* Dkt. No. 132. Accordingly, the only remaining defendant in this case is Gerrit Klaerner. The Court refers to Gerrit Klaerner and Tricida collectively as “Defendants” since both are alleged to have made statements challenged in the operative complaint, notwithstanding Tricida’s later dismissal.

1 common law right ‘to inspect and copy public records and documents, including judicial records
2 and documents.’” *Id.* (quoting *Kamakana*, 447 F.3d at 1178). “[A] strong presumption in favor of
3 access is the starting point.” *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome this
4 strong presumption, the party seeking to seal a judicial record attached to a dispositive motion
5 must “articulate compelling reasons supported by specific factual findings that outweigh the
6 general history of access and the public policies favoring disclosure, such as the public interest in
7 understanding the judicial process” and “significant public events.” *Id.* at 1178–79 (quotations
8 omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in
9 disclosure and justify sealing court records exist when such ‘court files might have become a
10 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public
11 scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (quoting *Nixon v.*
12 *Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the production of records
13 may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not,
14 without more, compel the court to seal its records.” *Id.*

15 The Court must “balance[] the competing interests of the public and the party who seeks to
16 keep certain judicial records secret. After considering these interests, if the court decides to seal
17 certain judicial records, it must base its decision on a compelling reason and articulate the factual
18 basis for its ruling, without relying on hypothesis or conjecture.” *Id.* Civil Local Rule 79-5
19 supplements the compelling reasons standard set forth in *Kamakana*: the party seeking to file a
20 document or portions of it under seal “must explore all reasonable alternatives to filing documents
21 under seal, minimize the number of documents filed under seal, and avoid wherever possible
22 sealing entire documents” Civil L.R. 79-5(a). The party must further explain the interests
23 that warrant sealing, the injury that will result if sealing is declined, and why a less restrictive
24 alternative to sealing is not sufficient. *See* Civil L.R. 79-5(c).

25 Records attached to nondispositive motions must meet the lower “good cause” standard of
26 Rule 26(c) of the Federal Rules of Civil Procedure, as such records “are often unrelated, or only
27 tangentially related, to the underlying cause of action.” *See Kamakana*, 447 F.3d at 1179–80
28 (quotations omitted). This requires a “particularized showing” that “specific prejudice or harm

1 will result" if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*,
2 307 F.3d 1206, 1210–11 (9th Cir. 2002); *see also* Fed. R. Civ. P. 26(c). "Broad allegations of
3 harm, unsubstantiated by specific examples of articulated reasoning" will not suffice. *Beckman*
4 *Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

5 II. DISCUSSION

6 Lead Plaintiff Jeffrey Fiore received thousands of pages of documents from the Food and
7 Drug Administration ("FDA") at the end of 2022, and initially sought leave of Court to file an
8 amended complaint based on this correspondence. *See* Dkt. No. 109. The Court ultimately did
9 not rule on this motion because the parties filed a stipulation agreeing that Plaintiff could amend
10 the complaint. *See* Dkt. No. 111. Plaintiff accordingly filed the SAC, which quotes extensive
11 excerpts from the FDA documents verbatim. *See* Dkt. No. 115. Klaerner subsequently moved to
12 dismiss the SAC. *See* Dkt. No. 128. The parties' briefing on Klaerner's motion to dismiss
13 similarly contains substantial excerpts from these FDA documents. *See* Dkt. Nos. 131, 135.

14 The Court previously denied Defendants' various motions to seal information received
15 from the FDA. *See* Dkt. No. 138. In light of the generic explanations provided by Defendants in
16 support of their sealing requests, the Court reasoned that "[i]t does not seem feasible that large
17 portions of the operative complaint and the parties' briefing on the pending motion to dismiss
18 could be sealed without jeopardizing the public's understanding of the case." *Id.* at 5. The Court
19 directed the parties to file public versions of all documents for which the proposed sealing had
20 been denied, or alternatively, Defendants could file a streamlined motion to seal consistent with
21 the Court's order. *Id.* Defendants were directed to "explain with specificity why each identified
22 excerpt should be kept under seal, including what trade secret is contained in any specific
23 communication; what injury will result if sealing is denied; and why a less restrictive alternative to
24 sealing is not sufficient under the circumstances." *Id.* (citing Civil L.R. 79-5(c)(1)). Klaerner then
25 filed the present motion to seal, followed by the more narrowly tailored statement by Renibus.
26 *See* Dkt. Nos. 139, 140.

27 Because the complaint is the pleading on which this action is based, the Court applies the
28 "compelling reasons" standard to this motion to seal. *See, e.g., Space Data Corp. v. Alphabet Inc.*,

1 No. 16-CV-03260-BLF, 2018 WL 10454862, at *2 (N.D. Cal. Aug. 31, 2018) (finding compelling
2 reasons standard governed motion to seal portions of the complaint); *In re NVIDIA Corp.*
3 *Derivative Litig.*, No. C 06-06110 SBA, 2008 WL 1859067, at *3 (N.D. Cal. Apr. 23, 2008)
4 (“While a complaint is not, *per se*, the actual pleading by which a suit may be disposed of, it is the
5 root, the foundation, the basis by which a suit arises and must be disposed of.”). As the Civil
6 Local Rules make clear, “[o]nly in rare circumstances should a party seek to file portions of a
7 pleading or brief under seal.” *See* Civil L.R. 79-5(e). Klaerner seeks to seal portions of the
8 briefing on the motion to dismiss for the same reasons that apply to the SAC. The Court therefore
9 addresses those arguments below.

10 As a preliminary matter, Klaerner’s renewed motion to seal is relatively barebones. In
11 support of his sealing request, Klaerner merely indicates that Renibus “has an interest in the
12 confidential information at issue regarding the development of veverimer” and notes that Renibus
13 intends to file a narrowed sealing motion. *See* Dkt. No. 139 at 2. This “high-level and generic
14 declaration” falls short of “explain[ing] with specificity why each identified excerpt should be
15 kept under seal,” as cautioned by the Court in its last order. Dkt. No. 138 at 5.

16 Renibus, however, seeks to seal only discrete portions of information contained in the
17 pleadings and exhibits which contain confidential clinical trial data that, if disclosed, would cause
18 it competitive harm. *See* Dkt. No. 140 at 3. This non-public trial data is “confidential and
19 proprietary information regarding the research and development of veverimer,” and includes
20 “specific, non-public clinical trial data regarding the structure, execution, results, and analysis of
21 the trials, including but not limited to specific measurements of blood bicarbonate levels that relate
22 to the efficacy of veverimer.” Dkt. No. 140-1 (Declaration of Renibus’ Vice President of
23 Regulatory Affairs) at ¶ 6. Renibus represents that “[t]he portions of the documents [it] seeks to
24 maintain under seal include only specific, non-public clinical trial data that, if disclosed, could be
25 used by competitors to gain a competitive advantage at a critical time in veverimer’s
26 development.” *Id.* at ¶ 8. Based on the Court’s review of the proposed redactions, the request is
27 narrowly tailored. The Court thus finds that this targeted and limited confidential information is
28 properly sealed even under the compelling reasons standard. *See Edwards Lifesciences Corp. v.*

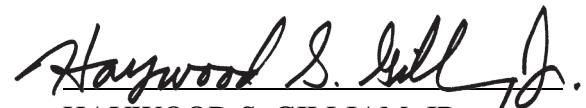
1 *Meril Life Sci. Pvt. Ltd.*, No. 19-CV-06593-HSG, 2023 WL 2743583, at *2 (N.D. Cal. Mar. 31,
2 2023) (finding the compelling reasons standard met where the documents incorporated data from
3 clinical trials, among other things); *see also In re Qualcomm Litig.*, No. 3:17-CV-0108-GPC-
4 MDD, 2017 WL 5176922, at *2 (S.D. Cal. Nov. 8, 2017) (observing that sealing such information
5 “prevent[ed] competitors from gaining insight into the parties’ business model and strategy”).

6 **III. CONCLUSION**

7 The Court **GRANTS** Klaerner’s motion to seal only as to the information identified by
8 Renibus. *See* Dkt. Nos. 139, 140. The motion to seal is otherwise **DENIED**. Given the scope of
9 the Court’s sealing order, the Court **DIRECTS** the parties to file publicly-available versions of the
10 SAC, the briefing on the motion to dismiss, and related exhibits containing redactions no broader
11 than the scope of Renibus’ narrowly tailored sealing request by March 4, 2024. *See* Dkt. No. 140
12 at 4–6. Only the specific information identified in paragraph 9 of Dkt. No. 140-1 may be redacted.
13 Each party is responsible for submitting these conforming versions of any document that it
14 originally filed, unless the parties mutually agree on a different allocation of this work.

15 **IT IS SO ORDERED.**

16 Dated: 2/27/2024



17 HAYWOOD S. GILLIAM, JR.
18 United States District Judge

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